

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, July 23, 2008, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Ray Dwyer
Tom Day
Walter Schmidt

BOARD MEMBERS ABSENT: None

SECRETARY TO THE BOARD: Peggy S. Tilley

OTHERS PRESENT: Atty. Robyn Schuchardt, Waukesha County Corporation Counsel
Richard Mace, Waukesha County Planning and Zoning Division Manager
Atty. Dan Gentges, BA08:028, attorney
Dan & Susan Doyle, BA08:038, petitioners
Tom Dewar, BA08:040, petitioner
Atty. Brian Brejcha, BA08:034, attorney
Dave Barker, BA08:038, builder
Nish Patel, BA08:039, petitioner
Jeff Schaf, BA08:041, petitioner
Wil Vidal, BA08:034, neighbor
Jim Gage, BA08:037, builder
Bob Reed, BA08:028
Randy Thelen, BA08:037, builder
Eileen & Dilio Menacho, BA08:037, petitioner
Greg Wernisch, BA08:037, neighbor
Gerald Dolphin, BA07:093, petitioner
Todd W. Lynch, BA07:093, builder
Ross Hanson, BA08:034, builder

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Bartholomew *I make a motion to approve the Summary of the Meeting of July 9, 2008.*

The motion was seconded by Mr. Schmidt and carried unanimously.

NEW BUSINESS:

BA08:028 ANR PIPELINE COMPANY:

Mr. Schmidt

I move to deny the request as follows: A tower was built, which is undisputed. The tower is over the limit that the County has in its Ordinance, that's undisputed. That it was built without a permit from the County, an application was never made, that's undisputed.

Conclusions of Law: I think that you have to find that it was put up improperly and in contravention of the Ordinances and it has to be removed. I don't see any hardship here, the hardship is all self-created. It certainly is adverse to the public interest because it's a danger to the air traffic pattern so the argument made by counsel and the petitioner does not meet any of the criteria to grant a variance. I am sympathetic to the petitioner in that this has been here for years, but at the end of the day, It's still in violation. However, I would temper the immediate removal of the tower by giving them 18 months to remove the tower and find another site. I think that is ample time, I think in equity that it would be unjust and inequitable to say they have to have it down tomorrow. It's been there for years and I think that they need that in their business. 18 months is more than adequate time to find another site. Counsel and the petitioner have acknowledged that there are two other alternate sites that they were looking at and to my knowledge, have not negotiated a transaction or a deal with the owners of these other sites at this point. A year and a half will give them ample time to do that and to construct the tower or to bring it into compliance on the site that they're at now although they've indicated that they can't do that.

The motion was seconded by Mr. Bartholomew.

After some discussion, Mr. Day made the following motion:

Mr. Day

I move to amend Mr. Schmidt's motion for denial to remove the 18 month time limit by which to remove the tower or bring it into compliance.

After more discussion, Mr. Day's motion was seconded by Mr. Dwyer and passed with three yes votes. Mr. Schmidt and Mr. Ward voted no.

The Board then voted on Mr. Schmidt's original motion, as amended, which passed with four yes votes. Mr. Ward voted no.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for a variance from the Ordinance to permit the ANR Pipeline tower at its present elevation exceeding the

Airport Height Limits by 107 feet.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

We have no objection to the maintenance of a tower at a conforming height along with its various users on the tower. However, in the interest of the public safety of the airport and its pilots using said facilities, it is inappropriate to recommend that this tower, exceeding the limitation of the airport height ordinance be allowed. While the petitioner does indicate various unique features and circumstances surrounding this tower and its use and the protection of the natural gas pipeline, it is not out of the question that a more appropriate and conforming location for such a communication tower is available and should be utilized so as to not impair or adversely impact the safety of the Waukesha County Airport users. Therefore, the staff cannot find any unique hardship that exists for continuing to allow the existence of this tower in violation of the airport height ordinance.

BA08:034 THOMAS H. LENTZ (OWNER) ATTY. BRIAN M. BREJCHA (AGENT):

Mr. Dwyer

I make a motion to approve the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The Planning and Zoning Division staff's recommendation was for approval of the request for variance from the remodeling a non-conforming structure in excess of 50% of its fair market value requirements of the Ordinance to allow the construction of an attached garage addition to the residence, subject to the following conditions:

1. The proposed attached garage addition must be located at least 7 ft. from the side lot lines, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset requirements.
2. Prior to the issuance of a Zoning Permit, a complete set of building plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
3. A detailed cost estimate must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
4. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed garage addition does not result in adverse

drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, as conditioned, will allow the construction of an attached garage addition to the existing residence on the property. The property does not currently contain a garage and the proposed addition will conform with all of the locational and size requirements of the Ordinance. The existing residence is a substantial structure that is only non-conforming due to offset. The construction of the proposed addition will not be detrimental to the surrounding area; therefore, the approval of this request would be with the purpose and intent of the Ordinance.

BA08:037 EILEEN MENACHO (OWNER) THELEN TOTAL CONSTRUCTION (AGENT):

Mr. Schmidt

*I make a motion to **deny** the request for variances from the shore and floodplain setback requirements of the Ordinance but **approve** the request for variances from the offset, floor area ratio, and open space requirements of the Ordinance, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report with the following modifications to the conditions and the reasons:*

Condition No. 3 shall be modified to read as follows: The proposed residence, including the first and second floors, any covered decks, covered patios, and/or covered porches shall not exceed 20.6% of the lot area. NOTE: If the lower level is not more than one-half below grade on at least one full side, it must be counted towards this calculation.

Condition No. 5 shall be modified to read as follows: The proposed residence and attached garage must be located 7 ft. from the side lot line, and the decking must be located at least 6 ft. from the side lot lines. The proposed residence, attached garage, and decking must be located 75 ft. from the ordinary high water mark, and 75 ft. from the 100-year floodplain of Okauchee Lake (the residence may be located as close as 50 ft. to the floodplain if the natural grade adjacent to the lowest level is at least 3 ft. above the floodplain), as measured to the outer edges of the walls, provided the overhangs do not exceed 2 ft. in width. If the overhangs exceed 2 ft. in width, the building must be

located so that the outer edges of the overhangs conform with the offset and setback requirements.

Paragraph one of the reasons stated shall be modified to read as follows: The approval of this request, as conditioned, will allow the removal of three non-conforming structures from the subject property and the construction of a new single-family home with an attached garage that will be in compliance with the road, shore and floodplain setback requirements of the Ordinance. The property is located within the Ultimate Sewer Service Area for the Town of Oconomowoc. When the property is served by sewer, the proposed residence will comply with the offset requirements. The property itself does not meet the open space requirements of the Ordinance for a sewer or nonsewered lot. Therefore, some relief is necessary from the open space requirements of the Ordinance to allow the construction of a new residence.

The motion was seconded by Mr. Dwyer and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for variances from the shore and floodplain setback requirements of the Ordinance but **approval** of the request for variances from the offset, floor area ratio, and open space requirements of the Ordinance to allow the construction of a new single-family residence on the property subject to the following conditions:

1. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
2. Prior to the issuance of a Zoning Permit, a soil boring down to the proposed basement elevation must be done and the soil test results must be provided to Planning and Zoning Division staff to determine compliance with Section 3(d)(10) of the Waukesha County Shoreland and Floodland Protection Ordinance.
3. The proposed residence, including the first and second floors, any covered decks, covered patios and/or covered porches shall not exceed 19.5% of the lot area. This will result in a floor area of approximately 1,988 sq. ft. NOTE: If the lower level is not more than one-half below grade on at least one full side, it must be counted towards this calculation.
4. The proposed residence must have an attached garage of at least 400 sq. ft.
5. The proposed residence, attached garage, and decking must be located at least 7 ft. from the side lot lines, 75 ft. from the ordinary high water mark, and 75 ft. from the 100-year floodplain of Okauchee Lake (the residence may be located as close as 50 ft. to the floodplain if the natural grade adjacent to the lowest level is at least 3 ft. above the floodplain), as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in

- width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset and setback requirements.
6. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
 7. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out locations of the proposed residence, attached garage, decking and any other appurtenances, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
 8. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete Vegetative Plan including seeding mixtures and amount of topsoil and mulch, an Erosion and Sediment Control Plan, and the impact of any grading on stormwater and drainage. This Grading and Drainage Plan may be combined with the Plat of Survey required in Condition No. 7.
 9. This variance request does not include retaining walls. Any proposed retaining walls will need to comply with all ordinance requirements.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, as conditioned, will allow the removal of three non-conforming structures from the subject property and the construction of a new single-family home with an attached garage that will be in compliance with the road, shore and floodplain setback requirements of the Ordinance. The property is located within the Ultimate Sewer Service Area for the Town of Oconomowoc. When the property is served by sewer, the proposed residence will comply with the offset and floor area ratio requirements. The property itself does not meet the open space requirements of the Ordinance for a sewer or nonsewered lot. Therefore, some relief is necessary from the open space requirements of the Ordinance to allow the construction of a new residence.

Variances should be granted only to provide the minimum relief necessary for a property owner to be able to use the property for a permitted purpose. The recommended structure provides this use of the property and would not be unnecessarily burdensome to the property owner. Without the need for the shore and floodplain setback variances, the property will be allowed an approximately 70 ft. deep building envelope. Therefore, it has not been demonstrated, as required for a variance, that denial of the variances from the shore and floodplain setback requirements would result in an unnecessary hardship. A hardship has

been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

The approval of this request, as conditioned, will allow the construction of a residence and attached garage that will be appropriately sized for the lot and not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the recommended conditional approval is in conformance with the purpose and intent of the Ordinance.

BA08:038 PAUL AND SUSAN DOYLE (OWNER) DAVE BARKER, BARKER BUILDERS (AGENT):

Mr. Dwyer

I make a motion to approve the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.

The motion was seconded by Mr. Bartholomew and carried with four yes votes, Mr. Day abstained from voting.

The Planning and Zoning Division staff's recommendation was for approval of the request for variances from the offset, shore, floodplain and conservancy setback, floor area ratio, and remodeling a non-conforming structure in excess of 50% of its fair market value requirements of the Ordinance subject to the following conditions:

1. The subject property shall be combined with the adjacent property to the north, also owned by the petitioner, by Certified Survey Map. The Certified Survey Map must be recorded in the Waukesha County Register of Deeds Office prior to the issuance of a Zoning Permit for the proposed addition.
2. The nonconforming house on the adjacent property to the north (to be combined with the subject property) shall be removed prior to the recordation of the Certified Survey Map.
3. The nonconforming shed must be removed from the property prior to the issuance of a Zoning Permit for the proposed addition.
4. The nonconforming deck shall be reduced in size so as to be a minimum of 4 ft. from the south lot line and 19 ft. from the shoreline. This will require that the deck be removed from the east side of the bump-out in the deck for the tree to the lake.
5. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.

6. Prior to the issuance of a Zoning Permit, a complete set of building plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
7. A detailed cost estimate for the addition must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
8. The residence shall be flood proofed to the flood protection elevation (based on the new floodplain data) in accordance with the methods set forth in the Waukesha County Shoreland and Floodland Protection Ordinance and shall be certified as such by a professional engineer registered in the State of Wisconsin. All flood proofing measures shall at a minimum provide anchorage to resist flotation and lateral movement, and shall insure that the structural walls and floors are watertight to the flood protection level (two feet above the new 100-year floodplain elevation). In order to insure that adequate measures are taken, the applicant shall submit a plan or document certified by a professional engineer that the flood proofing measures are adequately designed to protect the property to the flood protection elevation.
9. No filling activities and no change in the existing topography are permitted herein.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, as conditioned, will allow the petitioner to construct an addition to the existing residence on the property while eliminating several non-conforming structures and not expanding the footprint of the structure. The proposed addition will not be any closer to the shore, floodplain, road, or side lot lines than the existing residence. As conditioned, the subject property will be combined with the adjacent property to the north and the nonconforming house on that property will be removed. The extremely nonconforming shed will be removed and the deck will be reduced in size to eliminate its encroachment on the adjacent lot, and to bring it back off of the shoreline. The existing structure will be flood proofed and the total footprint of structures in the floodplain will be decreased. Therefore, the approval of this request, as conditioned, will be within the purpose and intent of the Ordinance.

BA08:039 NISH AND LINDA PATEL (OWNER):

Mr. Schmidt

I make a motion to approve the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report with the following modifications to the conditions:

Condition No. 2 shall be modified to read as follows: The proposed additions to the residence must be located no closer to the side lot lines than the existing residence as measured to the outer edges of the walls, provided the overhangs do not exceed 1.5 ft. in width. If the overhangs exceed 1.5 ft. in width, the entire north side of the building

must be relocated so that the outer edges of the overhangs conform with the offset requirements. In no even shall the overhangs encroach on the adjacent property to the north.

The motion was seconded by Mr. Dwyer and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the offset and remodeling a non-conforming structure in excess of 50% of its fair market value subject to the following conditions:

1. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
2. The proposed additions to the residence must be located no closer to the side lot lines than the existing residence as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset requirements.
3. A detailed cost estimate must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
4. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures and the staked-out location of the proposed additions and decking, in conformance with the above condition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
5. A detailed Grading and Drainage Plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed additions does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the plat of survey required in Condition No. 4.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, as conditioned, will allow the construction of several additions to the existing residence on the property. The proposed additions will be located no closer to

the side lot lines that the existing residence. The residence is a substantial structure, which is located in line with the adjacent residences and that is in very good condition. The property, along with the surrounding properties, is very long and narrow. It narrows towards the road and widens towards the lake. Therefore, there is not a more conforming location for a reasonably sized residence to be constructed on the lot and it is reasonable for the requested variances to be granted. The approval of this request would not be contrary to the public interest and would be within the purpose and intent of the Ordinance.

BA08:040 THOMAS DEWAR (OWNER):

Mr. Dwyer

*I make a motion to **approve** the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for a variance from the offset and remodeling a non-conforming structure in excess of 50% of its fair market value as well as **approval** of a special exception from the accessory building floor area ratio requirements of the Ordinance to allow the construction of an addition to the existing detached garage on the property subject to the following conditions:

1. The proposed garage addition must be located at least 5 ft. from the side lot line, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset requirements.
2. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures and the staked-out location of the proposed garage addition, in conformance with the above condition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
3. The garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured from the lowest exposed point to the peak of the roof, must not exceed 18 ft.
4. The proposed garage may contain an upper-level storage area only if the garage conforms with the height requirement noted above and only if that upper level is not accessible via a permanent staircase. The upper level of the garage may be accessed via pull-down stairs.
5. A detailed cost estimate must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
6. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan,

showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed garage addition does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, as conditioned, will allow the petitioner to construct an addition to the existing garage on the property. The proposed addition will be located in line with the existing garage and will be located at least 5 ft. from the lot line. Although the proposed garage addition will exceed the maximum allowable accessory building floor area ratio, the property will not exceed the total floor area requirement and will have enough open space. The approval of this request will not be contrary to the public interest and will be within the purpose and intent of the Ordinance.

BA08:041 JEFF AND MAUREEN SCHAF:

Note: Mr. Day recused himself from Board during the hearing on this matter.

Mr. Bartholomew *I make a motion to **approve** the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Schmidt and carried with four yes votes. Mr. Day abstained from voting.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the conservancy and floodplain setback, and open space requirements of the Ordinance for the construction of the new residence with attached garage decks and patios, subject to the following conditions:

1. The proposed residence, attached garage, and any proposed decks or patios must be a minimum of 17 ft. from the conservancy/wetland, and 75 ft. from the ordinary high water mark, as measured to the outer edges of the walls, provided the overhangs do not exceed 2 ft. in width. If the overhangs exceed two ft. in width, the building must be located so that the outer edges of the overhangs conform with the setback requirements.
2. The proposed residence shall meet the height requirements of the Ordinance i.e., the height

of the residence, as measured from the lowest exposed point to the peak of the roof, must not exceed 35 ft.

3. The construction of the residence shall adhere to the recommendations provided in the Analysis by Giles Engineering Associates dated May 24, 2006, unless changes or modifications are reviewed and approved by the Planning and Zoning Division Staff.
4. The first floor of the structure shall be placed a minimum of two feet above the floodplain elevation (824.0 ft. above mean sea level). The fill shall not be less than one (1) foot below the flood protection elevation for the particular area and the fill shall extend at such elevation, at least fifteen (15) feet beyond the limits of the structure. Where such distance cannot be achieved because of lot lines or other similar constraints, said fill elevation shall extend as far as is practical, resulting in no slope conditions at its terminus which may adversely affect surface water drainage.
5. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed residence, attached garage and decking, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
6. In order to ensure the construction of a new residence does not result in adverse drainage, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake. The following information must also be submitted along with the Grading and Drainage plan: a timetable for completion, the source and type of fill, a complete Vegetative Plan including seeding mixtures and amount of topsoil and mulch, an Erosion and Sediment Control Plan, and the impact of any grading on stormwater and drainage. This Grading Plan may be combined with the Plat of Survey required in Condition No. 5.
7. No retaining walls are proposed nor permitted herein. Any proposed retaining walls must comply with all Ordinance requirements pertaining to retaining walls or variances must be applied for.
8. Total square footage of the existing and proposed disturbed areas shall be calculated and the total shall be submitted the Planning and Zoning Division staff for review and approval prior to the issuance of a Zoning Permit. It should be noted that no disturbance will be allowed in the wetland areas.
9. Where possible, a 5 ft. vegetative buffer must be installed between the proposed driveway and parking areas and the wetland.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, as conditioned, will allow the construction of a new single-family residence with an attached garage on the subject property. The existing residence does not have a garage and does not appear to have been intended for year round use. The proposed residence will be located in approximately the same location as the existing residence and will be located 75 ft. from the ordinary high water mark of the lake. If the 75 ft. setback from the wetland and floodplain were required, there would no available space on the property for the construction of a residence. Therefore, it is reasonable to grant a variance from the wetland setback requirements of the Ordinance.

The exact amount of disturbance, existing and proposed, has not been calculated. The property is very large and due to the location of the residence, it requires a very long driveway, which reduces the amount of disturbance allowed for the building site and the mound system. Therefore, it is reasonable to grant a variance from the open space requirements of the Ordinance. As conditioned, all areas of disturbance will be reviewed and approved by the Planning and Zoning Division staff after final house and grading plans have been provided. It should be noted that the request proposed herein, substantially complies with the Board's decision in 2006 regarding BA06:052 for the construction of a new residence other than that a floodplain setback variance is now required. The approval of this request would not be contrary to the public interest. Therefore, approval of this request would be in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA07:093 GERALD DOLPHIN:

Mr. Day *I make a motion to reconsider this matter.*

The motion was seconded by Mr. Bartholomew and carried with four yes votes, Mr. Schmidt abstained because he was not in attendance at the original hearing on this matter.

Mr. Day *I make a motion to **approve** the request, in accordance with the Staff's recommendation, as stated in the Staff Memorandum and for the reasons stated in the Staff Memorandum.*

The motion was seconded by Mr. Dwyer and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** by revising Condition No. 3 to read as follows:

The residence and all other appurtenances must be at least 7.3 ft. from the north lot line, 5.8 ft. from the south lot line, and 19.4 ft. from the road right-of-way, as measured to the outer edges of the walls and any windows/bump outs that extend further out from the structure than the walls, with overhangs not to exceed two (2) ft. in width.

The reasons for the recommendation, as stated in the Staff Memorandum, are as follows:

The Planning and Zoning Division staff feels that the revised proposal substantially complies with the Board's previous decision. Therefore, the approval of the request to amend Condition No. 3 of the Board's January 23, 2008, decision as recommended, does not appear to alter the spirit and intent of the Board's original decision. Therefore, the approval of this request, as recommended, remains in conformance with the purpose and intent of the Ordinance.

ADJOURNMENT:

Mr. Bartholomew *I make a motion to adjourn this meeting at 9:05 p.m.*

The motion was seconded by Mr. Schmidt and carried unanimously.

Respectfully submitted,

Peggy S. Tilley
Secretary, Board of Adjustment